

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-60

March 26, 2003

TOWN OF HERMAN  
Request for Waiver of the Opt-Out Fee  
Requirement of Chapter 301

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

We dismiss the Town of Herman's request for a waiver of the opt-out fee provisions of Chapter 301 as moot.

**II. BACKGROUND**

During February 2001, the Town of Herman (Town) entered an agreement to purchase electricity from AES NewEnergy for a term between May 2001 and December 2002. In March 2002, the agreement was amended so that NewEnergy's obligation to provide electricity would be satisfied by arranging for the Town accounts to receive standard offer service. These accounts were transferred to standard offer during April 2002. During December 2002, the Town entered an agreement with Select Energy (Select) for the provision of electricity from January 2003 through January 2005. By re-entering the competitive market prior to the expiration of 12 months after taking standard offer service, the Town triggered the imposition of opt-out fees pursuant to section 2(C)(2) of Chapter 301.

On January 30, 2003, the Town filed with the Commission a request for a waiver of the opt-out fees. The Town explained that due to changes in personnel and inconsistencies in the filing of its electricity contracts, it was unaware that the accounts in question had been transferred to the standard offer under the amendment to its AES NewEnergy contract. Because of its confusion regarding this matter, the Town asked the Commission to waive the application of the opt-out fee to the Town's accounts.

On March 14, 2003, Select filed comments in response to the Town's request for a waiver. Because Select was the standard offer provider for the Town's class during the March 2002 through February 2003 period, Select would receive any opt-out fee amounts collected from the Town. As noted above, in this case Select is also the Town's competitive electricity supplier pursuant to the agreement executed in December 2002. Select stated that it would reimburse the Town for the opt-out fees because it is currently the Town's competitive electricity provider and the Town believed that it had been supplied continuously by a competitive provider through December 2002. Although the waiver request has become moot due to its decision to reimburse

the Town, Select requests that the Commission use this proceeding to prohibit the type of contract used by AES NewEnergy to transfer the Town's accounts to the standard offer. Such contracts, referred to by Select as "contracts for differences" or "CFDs," are arrangements designed to take advantage of the fixed standard offer rates by allowing for customers to be placed on standard offer when market prices rise above standard offer rates.

Select states that the Commission's opt-out provisions were implemented to discourage these types of contracts in recognition that the "gaming" of the standard offer would increase risk to standard offer providers resulting in increased standard offer prices. Select states that CFDs fall within the Commission's view of "gaming" in that the resulting transfer into or out of standard offer is a function of market prices relative to standard offer prices. Select notes that although the opt-out fee has proven to be a disincentive to customers, it does not prevent competitive providers from gaming the standard offer through mechanisms such as CFDs. Accordingly, Select argues that the Commission should prohibit such contracts.

### III. DECISION

For the reasons mentioned above, Select has indicated that it would reimburse the Town for the assessed opt-out fees. Accordingly, we dismiss the Town's request for a waiver of the opt-out fee as moot.

We decline Select's request to use this proceeding as a vehicle to prohibit CFDs. We agree with Select that the opt-out fee provisions of Chapter 301 were implemented to discourage the type of gaming of the standard offer represented by CFDs. See *Order Denying Request for Opt-Out Fee Waiver*, Docket No. 2001-594 (Nov. 7, 2001). We also agree that the current opt-out provisions are directed toward customers rather than competitive providers, and that as a result there may not sufficient disincentives to prevent providers from taking advantage of the fixed price nature of standard offer service.<sup>1</sup> However, the current proceeding is not an appropriate vehicle to consider the prohibition of certain types of contracts or the re-design of the opt-out fee provisions. This case was filed as a request for an opt-out fee waiver and accordingly, it was not noticed as a proceeding that would consider larger policy issues such as those presented by Select.

The Commission, however, has initiated an Inquiry to examine a variety of issues related to the standard offer and retail competition. *Inquiry Into Certain Issues Related to Standard Offer Service and The Retail Market*, Docket No. 2003-127. Among the issues that we will consider in the Inquiry is whether the current opt-out fee provisions

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<sup>1</sup> We take this opportunity to emphasize that although contracts such as CFDs are not currently prohibited, the gaming of the standard offer in this way is inconsistent with Maine's efforts to create an effective competitive market and our view is that these types of contracts are likely to frustrate, rather than further, the long-term interests of Maine's electricity consumers.

should be eliminated, redesigned or replaced. We will consider the concerns that Select has raised in this proceeding when we examine standard offer gaming and the need to revise our opt-out fee approach in the pending standard offer Inquiry.

Dated at Augusta, Maine, this 26<sup>th</sup> day of March, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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